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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

MILTON D. BATCHELDER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

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QUESTION PRESENTED FOR REVIEW

Whether, in order to satisfy the requirements of due process, an officer's affidavit, which is filed prior to an implied consent proceeding, must specifically set forth the underlying factual basis for the officer's reasonable belief that a defendant was driving under the influence of intoxicating liquor.

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

OPINION BELOW

The opinion of the Appellate Court of Illinois, Third Judicial District, is reported at 107 Ill. App. 3d 81, 437 N.E.2d 364 (3d Dist. 1982) (See Appendix A). The order of the Illinois Supreme Court denying leave to appeal is not reported, but is attached hereto (See Appendix B).

JURISDICTION

The opinion of the Illinois Appellate Court, Third Judicial District, was filed on June 16, 1982. A timely petition for leave to appeal was filed by the petitioner in the Illinois Supreme Court. The order denying the petition for leave to appeal was entered on October 5, 1982.

This court's jurisdiction is invoked under 28 U.S.C. § 1257(3). The instant petition for writ of certiorari is filed within 60 days of the Illinois Supreme Court's order denying leave to appeal. The decision of the Illinois Appellate Court, Third Judicial District, was premised upon federal constitutional grounds and does not rest upon independent state grounds.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment IV, provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV, provides that:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ill. Rev. Stat., 1979, ch. 95½, par. 11-501.1(d) provides that:

Suspension of license—Implied Consent.

* * *

(d) The arresting officer shall file with the Clerk of the Circuit Court for the county in which the arrest was made, a sworn statement naming the person refusing to take and complete the test requested under the provisions of this Section. Such sworn statement shall identify the arrested person, his driver's license number and current residence address and shall specify the refusal of that person to take the test requested and the time, place or places where such request was made. Such sworn statement shall include a statement that the arresting officer had reasonable cause to believe the person was driving the motor vehicle within this State while under the influence of intoxicating liquor and that such test was made as an incident to and following the lawful arrest for an offense as defined in Section 11-501 of this Act or a similar provision of a municipal code, and that the person, after being arrested for an offense arising out of acts alleged to have been committed while so driving refused to submit to and complete a test as requested orally and in writing as provided in paragraph (a) of this Section.

The Clerk shall thereupon notify such person in writing that his privilege to operate a motor vehicle will be suspended unless, within 28 days from the date of mailing of the notice, he shall request in

writing a hearing thereon. If such person fails to request a hearing within such 28 day period, the Clerk shall so notify the Secretary of State who shall automatically suspend such person's driver's license, the privilege of driving a motor vehicle on highways of this State given to a nonresident, or the privilege which an unlicensed person might have to obtain a license under the Driver's License Act, as provided in paragraph (a) of this Section.

If such person desires a hearing, he shall file a complaint in the Circuit Court for and in the county in which he was arrested for such hearing. Such hearing shall proceed in the Court in the same manner as other civil proceedings, except that the scope of such proceedings shall cover only the issues of whether the person was placed under arrest for an offense as defined in Section 11-501 of this Act or a similar provision of a municipal ordinance, whether the arresting officer had reasonable grounds to believe that such person was driving while under the influence of intoxicating liquor, whether the person was informed orally and in writing as provided in paragraph (a) that his privilege to operate a motor vehicle would be suspended if he refused to submit to and complete the test and whether, after being so advised, he refused to submit to and complete the test upon request of the officer.

Immediately upon the termination of the Court proceedings, the Clerk shall notify the Secretary of State of the Court's decision. The Secretary of State shall thereupon suspend the driver's license, the privilege of driving a motor vehicle on highways of this State given to a nonresident, or the privilege which an unlicensed person might have to obtain a license under the Driver's License Act, of the arrested person if that be the decision of the Court. If the Court recommends that such person be given a restricted driving permit to prevent undue hardship, the Clerk shall so report to the Secretary of State.

STATEMENT OF THE CASE

Defendant in the instant case was stopped while driving his vehicle by Officer Sauer of the Peoria Police Department after the officer observed the reckless and erratic manner in which the defendant was operating his vehicle. After effectuating the stop, the officer approached the defendant. The officer asked the defendant if he had been drinking. The driver responded, "Yes, I'm drunk." *See People v. Batchelder*, 107 Ill. App. 3d 295, 438 N.E.2d 1215 (3d Dist. 1982). As a result of this admission, plus his erratic driving, the defendant was arrested and charged with driving under the influence of intoxicating liquor.

The Illinois statute involved implies consent of a person who operates a motor vehicle to take a breathalyzer test following the arrest of the person for driving under the influence. If the person refuses, the officer must file an affidavit stating he had reasonable cause to arrest the individual for driving under the influence, and that the driver refused to take the breathalyzer test. Thereafter, unless the driver requests a hearing within 28 days, his driver's license is suspended without hearing, or, if a hearing is requested, it is determined whether there is reasonable cause to support suspension. Ill. Rev. Stat., 1979, ch. 95½, par. 11-501.1(d).

The arresting officer requested that defendant take a breathalyzer test, but defendant refused. As a result, pursuant to the applicable statute, the officer filed a sworn statement which read, in pertinent part, as follows:

> I hereby certify that I have placed the above-named person under arrest, and that I had at the time of arrest reasonable grounds to believe that

> said person was driving a motor vehicle in this State while under the influence of intoxicating liquor in that: TRAVELING TOO FAST IN ALLEY WITH PEDESTRIANS AROUND, CROSSED WALNUT W/O SLOWING, MAINTAINED SPEED BEHIND SLIPPER CLUB THEN PARKED ABRUPTLY BEHIND 519 S.W. ADAMS. I further certify that said person did willfully refuse to submit to the breath analyses when requested to do so in accordance with Section 11-501.1 of the Illinois Vehicle Code, after being informed of the possible consequences of his or her refusal. (C. 1)

On September 15, 1981, the People of the State of Illinois and the defendant, by their respective counsel, appeared before the Honorable William H. Young, pursuant to a request by the defendant for a hearing as provided by paragraph 11-501.1(d). However, prior to the taking of any evidence, the court asked if there were any motions. The People replied in the negative while defense counsel stated that he had a motion. Counsel then moved to dismiss the "affidavit" filed by the arresting officer. After short arguments were made by both counsel, the trial judge granted the defendant's motion stating that "the report and affidavit of the arresting officer" did not meet the statutory requirements and that the complaint did not state any facts showing the defendant was under the influence of intoxicating liquor at the time he was arrested. The court then entered an order denying the People's request for suspension. (C. 2) No witnesses were sworn or evidence presented by either counsel.

The Illinois Appellate Court, Third Judicial District, affirmed the trial judge's granting of defendant's motion to dismiss the officer's affidavit, but for reasons which differed from those of the lower court. The Illinois Appellate Court determined that the officer had complied with the statutory requirement, in that the

officer had set forth the fact that he had reasonable cause to believe that the defendant was driving a motor vehicle under the influence of intoxicating liquor, but that this recitation of statutorily-required language was insufficient to comport with the due process requirements of the Fourth and Fourteenth Amendments. The Illinois Appellate Court determined that the Fourth and Fourteenth Amendments required the officer to specify in his affidavit the underlying factual basis for his reasonable belief that the defendant was driving under the influence. (See Appendix A).

The petitioner herein, the People of the State of Illinois, sought timely leave to appeal the decision of the Illinois Appellate Court in the Illinois Supreme Court. Leave was denied. (See Appendix B).

REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

THE SAME SPECIFICITY DEMANDED BY THE FOURTH AND FOURTEENTH AMENDMENTS FOR AFFIDAVITS IN CRIMINAL CASES IS NOT REQUIRED FOR AN IMPLIED CONSENT AFFIDAVIT FILED BY AN OFFICER PRIOR TO A PRESUSPENSION HEARING.

The sole question presented in this petition is what does due process require in an implied consent situation. The focus of the issue is upon the content of the police officer's affidavit that is filed after a defendant has refused to take a breathalyzer test as required by statute. Ill. Rev. Stat., 1979, ch. 95½, par. 11-501.1. The Illinois Appellate Court determined that literal compliance with the statutory requirement, that is, that the officer merely set forth the fact that he had reasonable cause to believe that the defendant was driving while intoxicated, is insufficient to comport with the due process clause of the Fourteenth Amendment. The Illinois Appellate Court then engrafted upon the Illinois Implied Consent Statute the requirement that an officer articulate in his affidavit the grounds underlying his reasonable cause determination. The Illinois Appellate Court's application of the Fourth Amendment to the Illinois Implied Consent Statute is erroneous.

Although the Illinois implied consent statute may differ in some respects from those of other states, implied consent hearings have been uniformly considered as being civil in nature. *Haswell v. Powell*, 38 Ill. 2d 161, 230 N.E.2d 178, 181 (1967); *People v. Malloy*, 76 Ill. 2d 513, 395 N.E.2d 381, 383 (1979); *Bell v. Department of Motor Vehicles*, 6 Wash. App. 736, 496 P.2d 545 (1972); *Minnick v. Melton*, 53 A.D.2d 1016, 386 N.Y.S. 2d 488

(1976); *McDonnel v. Department of Motor Vehicles*, 119 Cal. Rptr. 804, 45 Cal. App. 3d 653 (1975). The reason behind this civil treatment of implied consent is that the suspension of a driver's license is considered a purely administrative function of the Secretary of State and is not therefore penal in nature. *McDonnel*, 119 Cal. Rptr. 804; *People v. Finley*, 21 Ill. App. 3d 335, 315 N.E.2d 229, 232 (3d Dist. 1974). Thus, the question becomes what does due process require under an implied consent statute.

As noted by the Illinois Appellate Court, the due process clause applies to a state's suspension of a person's driving privilege. 437 N.E.2d at 367; Appendix A at 3a-4a. A person's interest in his driving privilege is "property" which the State may not take away without satisfying the requirements of the due process clause of the Fourteenth Amendment. *Dixon v. Love*, 431 U.S. 105, 112 (1977); *Bell v. Burson*, 402 U.S. 535, 539 (1971).

The constitutional guarantee of due process embodies the presumptive requirement of notice and a meaningful opportunity to be heard before the state acts to deprive a person of his property. *Bell v. Burson*, 402 U.S. at 541-43; *Mackey v. Montrym*, 443 U.S. 1, 10-12 (1979); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950). This settled principle serves to ensure that the person threatened with the loss of a property interest will have an opportunity to present his side of the story to a neutral decision maker at a time when the deprivation can still be prevented. *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Therefore, since the suspension hearing is civil in nature, the requirements of due process are met by the Illinois implied consent statute which specifically provides a defendant with notice of the proposed suspension and an opportunity to be heard prior thereto. Ill. Rev. Stat., 1979, ch. 95½, par. 11-501.1(d).

Under the present statutory scheme, the affidavit need only contain the officer's sworn statement that he had reasonable cause to believe the person was driving a motor vehicle while under the influence of intoxicating liquor. There is no requirement in the statute that the officer spell out, detail for detail, in his affidavit the facts giving rise to reasonable cause to so believe. Although the Illinois Appellate Court acknowledged that the statute only required the officer's conclusion that he had reasonable cause [437 N.E.2d at 366; Appendix A at 2a], the appellate court nonetheless engrafted upon the statute a Fourth Amendment analysis adding the requirement that the officer detail with particularity the underlying facts which support his conclusion that the person arrested was driving while intoxicated. 437 N.E.2d at 366-67; Appendix A at 3a-4a.

The Petitioner maintains the application of the purported Fourth Amendment requirement to the affidavit is totally unwarranted because the statutory provision for a suspension hearing is a civil matter which does not ultimately result in the loss of an individual's personal liberty as is the situation in a criminal case. Moreover, the suspension hearing itself satisfies the need for judicial review of the facts prior to suspension of a defendant's driving privileges.

The Fourth Amendment was designed to prevent unlawful police conduct, and to ensure the personal security of the citizenry regardless of whether the intrusion is termed an "arrest" or "investigatory detention." *Davis v. Mississippi*, 394 U.S. 721, 726-27 (1969). The warrant procedure serves to ensure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police in order to assess the weight and credibility of the information which a police officer adduces as probable cause. *Wong Sun v. United States*,

371 U.S. 471, 481-82 (1963). Thus, the Fourth Amendment was in large part enacted to interpose, wherever possible, the scrutiny of a detached magistrate between the police and citizen *before* the deprivation of an individual's personal rights has occurred. However, requiring the same exacting specificity that is normally demanded in a criminal situation to the instant civil matter is simply not warranted in the scheme of implied consent.

Throughout its opinion the Illinois Appellate Court compares the officer's affidavit and the suspension hearing provision with affidavits under the Fourth Amendment, which are required in general criminal proceedings. 437 N.E.2d at 366-67; Appendix A at 3a-4a. However, as heretofore noted, the suspension law is civil in nature, not criminal. The exactitudes required in the criminal sphere, where one's personal liberty is at stake, are not mandated in this type of civil proceeding. Granted, the loss of a property interest is at stake here, but due process in this context only requires notice and a hearing before that particular property interest is taken away. Treating the suspension proceeding as a form of "criminal" prosecution, as the Illinois Appellate Court has done, is not required with respect to the protection of a defendant's property rights in his driver's license.

Furthermore, the Illinois Appellate Court's concern that police officers will randomly harass drivers with breathalyzer tests under penalty of automatically losing their driver's licenses unless somehow required to reduce their reasonable cause determinations to writing in advance of hearing loses sight of the purpose of the Illinois statute. In the first place, the Fourth Amendment was drafted with the requirement of preseizure judicial scrutiny in mind. Here, however, it is a fact that the officer *will have already stopped* and requested

the individual to take the breathalyzer test *before* even having to file his affidavit. The affidavit is not used to obtain prior judicial approval to justify either an officer's stopping of an individual on a charge of driving under the influence or requesting the driver to take the breathalyzer test. The affidavit merely serves as a means of establishing a *prima facie* factual foundation for revocation of a defendant's driver's license for refusing to take the breathalyzer test. To conclude that the specificity requirement would prevent police harassment of drivers by requiring them to detail the underlying facts of their reasonable cause determination is a complete *non sequitur*.

Furthermore, even if the driver refuses to take the breathalyzer test, his refusal *does not automatically* mean that his license will be revoked or suspended. The legislature, in order to protect against this, has interposed between the refusal to take the breathalyzer test and suspension of one's license the right to a hearing to determine reasonable cause. Under the Illinois legislative scheme, automatic suspension without notice and opportunity to be heard does not occur upon filing of the statutorily-required affidavit by the officer. Hence, the concerns of the Illinois Appellate Court are further obviated.

Moreover, the optional hearing provided by paragraph 11-501.1(d) ensures that the officer's reasonable belief determination will be measured against an objective standard by an impartial judicial officer, subject to the rights of confrontation, explanation and rebuttal by the arrested driver. The suspension hearing deals *inter alia* with the issue of reasonable cause. Ill. Rev. Stat., 1979, ch. 95½, par. 11-501.1(d); *People v. Finley*, 315 N.E. 2d at 233; *Saunders v. Commission of Public Safety*, 226 N.W. 2d 19 (Iowa 1975). Requiring the officer to specify

the details of his reasonable cause determination in the affidavit is duplicative and fails to add one iota of deterrence against arbitrary police conduct or protection against the loss of one's driving privilege which is not already provided by the statute. The suspension hearing was specifically designed by the legislature to do that which the Illinois Appellate Court has sought to do by engrafting the Fourth Amendment standard upon the affidavit requirement. The issue of reasonable cause is adequately dealt with at the suspension hearing. Thus, due process is fully served.

The legislative purpose in enacting the implied consent law was to reduce the holocaust and carnage on our highways, much of which is attributable to drivers who have consumed excessive quantities of intoxicating liquor. The license revocation provisions of implied consent were intended to protect the public from irresponsible drivers by taking away their driving privileges. The legislative scheme has interposed certain safeguards upon the use of the suspension law so as to not arbitrarily and capriciously deprive an individual of his property interest in his right to drive a motor vehicle. However, due process simply does not mandate that all governmental decisionmaking comply with standards that ensure perfect, error-free determinations. *Mackey v. Montrym*, 443 U.S. at 13. The suspension procedure only requires the officer to state in his affidavit his conclusion that he had reasonable cause to believe that the arrested person was driving under the influence of intoxicating liquor. The filing of the affidavit then sets in motion the notice and hearing rights required by due process. Finally, the presuspension hearing provides a forum, if requested by a defendant, for testing the officer's reasonable cause determination. *See Fritz v. Department of Motor Vehicles*, 6 Wash. App. 233, 492 P.2d

558 (1971); *McLeod v. Department of Motor Vehicles*, 16 Wash. App. 400, 556 P.2d 563 (1976); *Metcalf v. Department of Motor Vehicles*, 11 Wash. App. 819, 525 P.2d 819 (1974); *Wolney v. Secretary of State*, 77 Mich. App. 61, 257 N.W.2d 754 (App. 1977).

Accordingly, the legislative scheme, as enacted, comports with the due process clause without the necessity of expansion. *Mackey v. Montrym*, *supra*; *Bell v. Burson*, *supra*; *Dixon v. Love*, *supra*; *Mathews v. Eldridge*, *supra*; *Anderson v. Cozens*, 131 Cal. Rptr. 256, 60 Cal. App. 3d 130 (1976). Therefore, the appellate court's application of the Fourth Amendment to this civil proceeding was erroneous and should be reversed.

CONCLUSION

For the reasons and arguments stated herein, the petitioners respectfully request that a writ of certiorari issue to the Appellate Court of Illinois, Third Judicial District, to review that court's decision which affirmed the trial court's decision to dismiss the officer's affidavit in the instant implied consent proceeding.

Respectfully submitted,

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December 4, 1982

APPENDIX A

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 1982

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

No. 81-577 *v.*

MILTON D. BATCHELDER,

Defendant-Appellee.

Appeal from the Circuit Court of Peoria County.
Honorable William H. Young, *Presiding.*

Mr. JUSTICE HEIPLE delivered the opinion of the Court:

This cause involves the implied consent hearing held to determine whether Milton D. Batchelder's driver's license should be suspended for refusing to submit to a breathalyzer test following his arrest for driving while under the influence of alcohol. The trial court granted Batchelder's motion to dismiss on the grounds that the affidavit of the arresting officer was insufficient to comply with the statutory requirements. The defendant-appellee entered no appearance in the appeal and filed no brief. The appellant did not request oral argument. Accordingly, the appeal was taken for consideration and disposition on the brief of the appellant.

The threshold question for consideration is whether this proceeding is appealable by the prosecution. If this proceeding were viewed as an acquittal of criminal charges, it would not be appealable by the state. If, on the other hand, the proceedings are civil in nature, then the state would have a perfect right to appeal. In truth, the proceedings have elements of both a civil and criminal nature. One could call them quasi-criminal or quasi-civil. Our supreme court has ruled, however, that these proceedings are appealable in the same manner as other civil proceedings. *People v. Malloy* (1979), 76 Ill. 2d 513; see also, *Park Forest v. Angel* (1976), 37 Ill. App. 3d 746.

In this case, the trial judge found that the arresting officer's affidavit did not comply with the statute because it failed to state facts which showed that Mr. Batchelder was under the influence of intoxicating liquor. An examination of the statute, however, discloses that it merely requires a recitation of the officer's conclusion that he "* * * had reasonable cause to believe the person was driving * * * while under the influence of intoxicating liquor. * * *" (Ill. Rev. Stat. 1979, ch. 95½, par. 11-501.1(d).) In short, the statute does not require the setting forth of underlying facts and circumstances which prop up the officer's conclusions. In fact, the affidavit in this case contained the precise statutory language quoted and more. It went on to state that the defendant was "* * * traveling too fast in alley with pedestrians around, crossed Walnut w/o slowing, maintained speed behind Slipper Club then parked abruptly behind 519 S.W.Adams. * * *"

While we agree with the trial judge that the underlying facts that were stated are insufficient to support the officer's conclusion, the recitation of such facts are surplusage to the requirements of the statute. Thus, the trial judge reasoned incorrectly in dismissing the proceedings because the affidavit did not comply with the statute. The officer's affidavit literally complied with the statute. That is to say, since the statute does not require the recital of facts that underlie the officer's conclusion, the statute is not violated when such underlying facts are not set forth. The statute was complied with.

We agree, however, that the affidavit was insufficient. The insufficiency is not due to its failure to comport with the statute, however. The insufficiency of the affidavit is due to its failure to comport with the constitution, specifically, the Fourth and Fourteenth Amendments thereof.

While it might be argued that the failure of the statute to require the affidavit to set forth underlying facts renders the statute itself unconstitutional, we reject such an interpretation because of the general principle of statutory construction that, if possible, legislation is to be so construed as not to violate the constitution. An important corollary of this general principle is that a statute need not be treated as unconstitutional or void for not containing a qualification which the law will imply. The operation of a statute in such cases may be interpreted within constitutional limits without necessitating a judgment that the act itself is void. A statute may be constitutional although it lacks provisions which meet constitutional requirements, if it has terms not excluding such requirements. And in this situation, the court is justified in holding that the statute was intended to be subject to such requirements, and that those requirements are to be considered as embodied in the statute. (See 16 Am. Jur. 2d *Constitutional Law*, §225 (1979).) Thus, where the articulation of the officer's grounds for probable cause are not expressly provided for by statute; yet constitutional guarantees provide for such; we construe the law as requiring the officer's conclusion that he had probable cause to be bolstered with a recital of the facts upon which his belief is based. Thus, both the statute and constitution are served.

The Fourth and Fourteenth Amendments to the United States Constitution pertain to this situation because stopping an automobile and detaining its occupants constitute a "seizure" within the meaning of those amendments, even though the purpose of the stop is limited and the resulting detention quite brief. (*Delaware v. Prouse* (1979), 440 U.S. 648.) That the Due Process Clause applies to a state's suspension or revocation of a driver's

license is clear from the supreme court's decisions in *Dixon v. Love* (1977), 431 U.S. 105, and *Bell v. Burson* (1971), 402 U.S. 535. The essential purpose of the constitutional requirements is to impose a standard of reasonableness upon the exercise of discretion by government officials, including police officers, in order to safeguard the privacy and security of individuals against arbitrary invasions. *Marshall v. Barlow's, Inc.* (1978), 436 U.S. 307, quoting *Camara v. Municipal Court* (1967), 387 U.S. 523.

The permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. Construed in this manner, the reasonableness usually requires, at a minimum, that the facts upon which the intrusion is based be capable of measurement against "an objective standard". *Terry v. Ohio* (1968), 392 U.S. at 21.

Applying the balancing test to the instant situation, we believe it reasonable that the arresting officer set out the underlying circumstances which provided him with a reasonable belief that the arrested person was driving under the influence of intoxicating liquor. Within the scope of inquiry at the driver's license suspension proceeding is the precise issue of whether the arresting officer had reasonable grounds for such belief. His belief must be measured against the objective standard of an impartial member of the judiciary and subject to the confrontation, explanation and rebuttal by the arrested driver. But such a time-honored method cannot be utilized unless the grounds for probable cause are set forth in the police officer's report or affidavit. We see the requirement that the arresting officer state the underlying facts which support his conclusion as a minimal burden on the government. The citizen is thus protected from unreasonable deprivations of his liberty and loss of driving privileges.

True enough, highway carnage due to drunken driving is a serious problem. True enough, drunken driving should be discouraged and, where possible, prevented

altogether. In so proceeding, however, police practices must conform to both statutory and constitutional requirements.

It cannot be doubted that it is a major inconvenience for a driver going about his business to be stopped by a police officer and required to take a breathalyzer test on penalty of losing his license. The interruption, without regard to the urgency of the driver's mission, could not take less than a full hour of time and, probably, considerably more time than an hour. Without statutory and constitutional direction that the officer detail the underlying facts supporting his conclusion, the police would possess an absolute license to require any driver at any time and under any circumstances to either take a breathalyzer test or lose his license. Such a procedure cannot be tolerated as it would permit and, in some cases, invite active police harassment.

In the instant case the arresting officer did specify in his affidavit and report the grounds for his belief that Mr. Batchelder was driving while under the influence of intoxicating liquor in that Mr. Batchelder was "* * * traveling too fast in alley with pedestrians around, crossed Walnut w/o slowing, maintained speed behind Slipper Club then parked abruptly behind 519 S.W. Adams. * * *" Such a recital is insufficient to support the officer's conclusion that the driver was under the influence of intoxicating liquor. We find, for instance, no allegation of unsteady postural conduct or alcoholic odor emanating from Mr. Batchelder. While his driving conduct might suggest other vehicular violations, it is deficient, standing alone, to support a conclusion that he was driving while under the influence of intoxicating liquor.

For the reasons herein stated, we affirm the dismissal in the case.

AFFIRMED.

BARRY, P.J. and SCOTT, J., concur.

APPENDIX B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

October 5, 1982

State's Attorneys Appellate
Service Commission
Third Judicial District
P. O. Box 654
Ottawa, Illinois 61350

No. 57062—People State of Illinois, petitioner, vs. Milton D. Batchelder, respondent. Leave to appeal, Appellate Court, Third District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

Very truly yours,
/s/ Juleann Hornyak
Clerk of the Supreme Court